

(20) MAR 31 1941

CHARLES ELMORE DROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 831

MACEO THOMAS,

Petitioner,

vs.

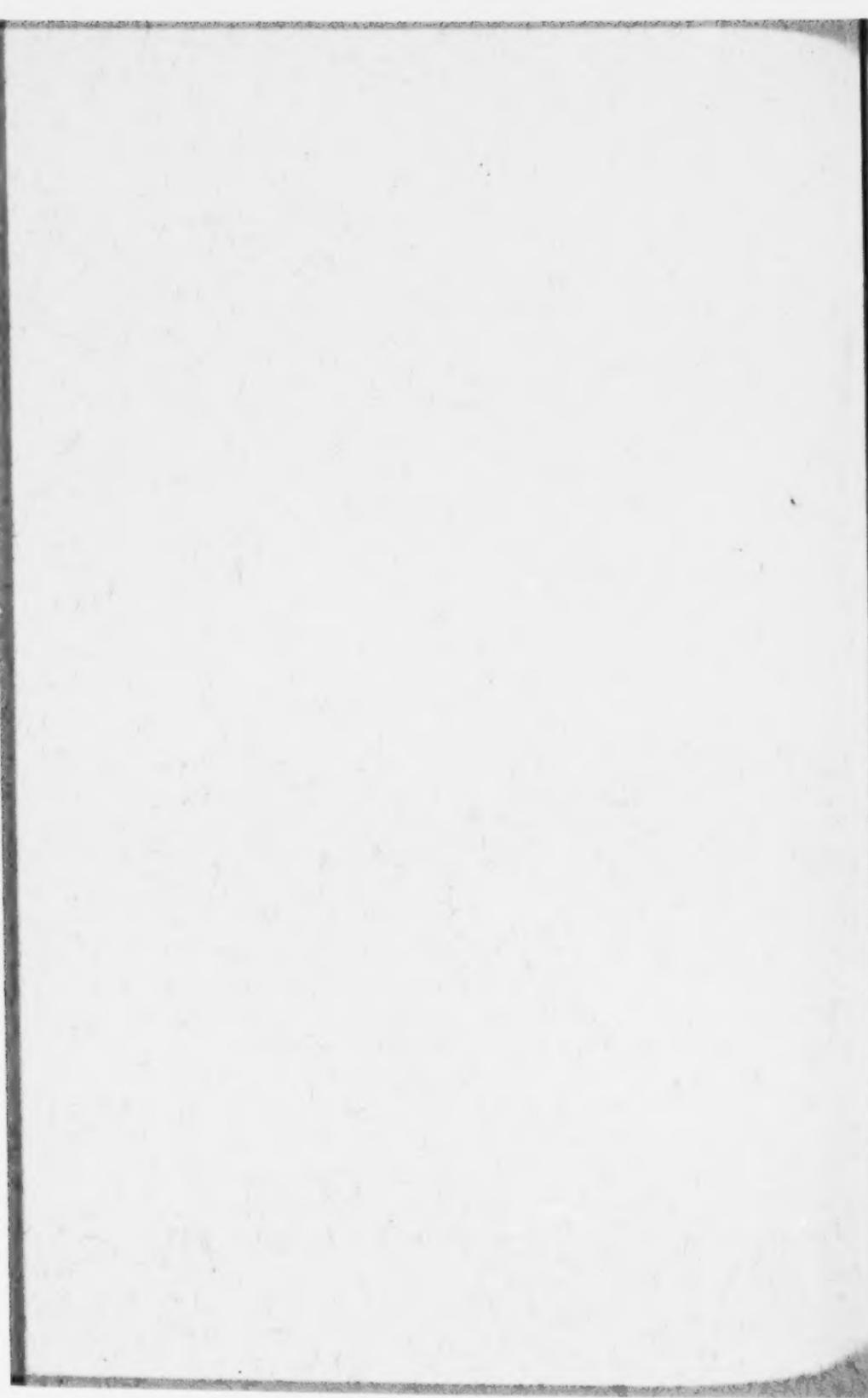
STATE OF KANSAS.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF KANSAS.

LESTER M. GOODELL,

ELISHA SCOTT,

Counsel for Petitioner.



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Comes now Maceo Thomas and respectfully petitions the Honorable Court for a Writ of Certiorari and states that the record in his case discloses that on or about November 3rd, 1943 that he had been touring certain voting precincts in the City of Topeka, Kansas, and that by accident and without any plan or pre-arrangement met the complaining witness Nathaniel Patterson and an argument ensued and later the two parties engaged in a fight. The testimony shows without a doubt and without dispute that your petitioner Maceo Thomas was first struck on the head by a large rock held by the complaining witness. (Ab. 8-12, 16) following this your petitioner and the complaining witness struggled over twenty or twenty-five feet of ground finally resulting in the complaining witness being cut on the leg by a small knife being held by your petitioner. The defendant was bound over to the District Court for

trial at a preliminary hearing upon a complaint of assault with intent. After conviction by a jury, as charged in the information, a motion for a new trial was duly filed and presented to the lower court which was overruled. It is from the order overruling his motion for a new trial, rulings made during the trial, together with judgment which was pronounced upon the verdict, that the defendant has taken this appeal.

Appellant's Contentions.

1. The evidence did not justify the submission of the case to the jury under G. S. 1935, 21-431.
2. The court improperly instructed the jury as to the law of self defense.
3. The cross-examination of the complaining witness was improperly restricted.
4. Hearsay testimony was improperly admitted at the trial. And your petitioner further contends that Article 1 of the 14th Amendment to the Constitution of the United States has been violated: —14th Amendment—Section 1:

Citizenship; privileges or immunities; due process clause. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United states; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws;

and

Amendment 5

Criminal Prosecutions: Due Process of Law: Eminent Domain.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

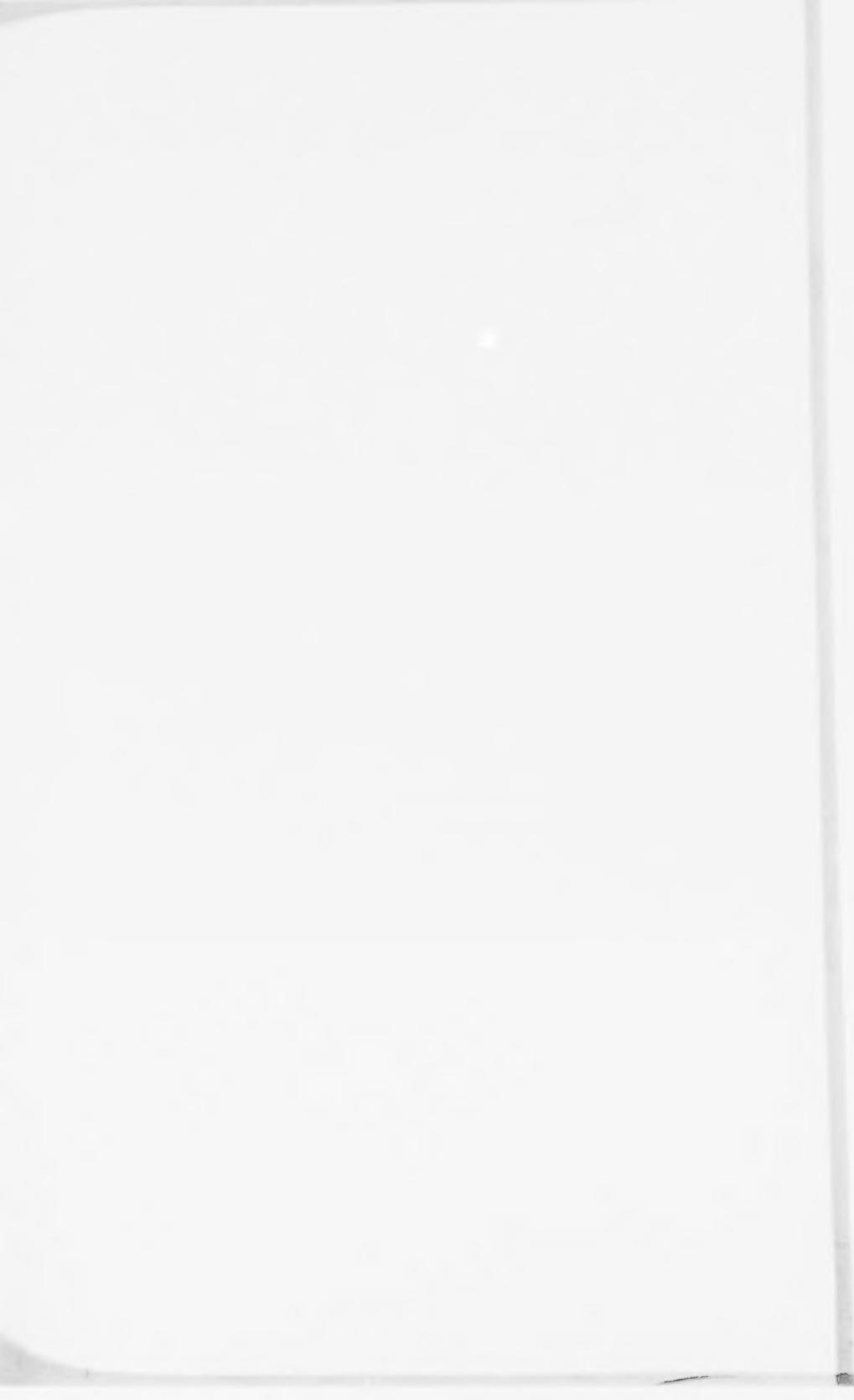
It is further the contention of your petitioner that he was not tried under and by virtue of the due processes of law provisions of the United States Constitution nor of the due process law provision of the Constitution of the State of Kansas in that just pointing out a few of the reasons that your petitioner claims. The Jury that tried the case discussed evidences and matters not authorized by the Court and the verdict of the Jury was not a fair honest expression on the part of the whole Jury and the Jury was influenced by prejudices and passion on the account of remarks made by the Prosecuting Attorney in opening and closing arguments in the case, which violated the due process of law provisions of the forementioned and the petitioner did not have a fair trial as guaranteed him by our Federal and State Constitution and as proved the law in such cases made and provided and we think that the record has included and incorporated in the transcription of records that it files with this Honorable Court and we believe that the Court is clearly justified in reviewing the judgment

of the lower court and that the Writ of Certiorari be allowed and that on the final submitting of the case that the judgment of the court be reversed and the case remanded with the proper instruction from this Honorable Court.

Respectfully submitted,

LESTER M. GOODELL,
ELISHA SCOTT,
Attorneys for Petitioner.

(1277)



END OF

A CASE